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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Re application of

SCARPA et al

Serial No.: 09/394,289

Filing Date: 09/10/99

Title: CONVERGENT SPRAY GUN CAPABLE OF BEING HAND-HELD

Commissioner of Patents & Trademarks
Washington, DC 20231

Date: August 22, 2001

Docket No.: N800/ST-108

Examiner: KIM, C

Art Unit: 3752

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APPELLANTS' RESPONSE TO EXAMINER'S ANSWER

This is a response to the Examiner's Answer mailed on March 6, 2002

ANSWER TO THE 35 U.S.C. § 112, first paragraph Rejection:

Applicants have submitted a proposed amendment for curing the defect noted by the Examiner. Applicants' attorney inadvertently substituted the term "air cap" for the term "fluid tip", two terms that are unique in this technology. As was pointed out in the proposed amendment, the support for the amendment is adequately contained in the specification. The proposed amendment, in fact, quoted the specification wherein the support lies. The proposed amendment does not introduce new matter, nor is an additional search required and accordingly, since it places the claim in better form for appeal, it should be entered.

ANSWER TO THE EXAMINER'S REJECTION UNDER 35 U.S.C. 103(a) AS BEING UNPATENTABLE OVER BLACK:

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The Examiner argument that ... "It would have been obvious to a person of ordinary skill in the art at the time the invention was made to have added flats to the fluid tip of Black to accommodate a wrench is not pertinent to the facts of this case." It is neither understood nor apparent how having flats to accommodate a wrench bears on this invention and, for that matter, the claim language. The fluid tip of this invention includes an inner central passage and an enlarged diameter outer surface. The outer surface bears against the inner surface of a concentric tube that flows air. The mating surfaces block the flow of air. A flat(s) is formed on the outer surface to define a gap between the outer surface of the fluid tip and the inner surface of the concentric tube to permit a small portion of air to discharge therefrom in a specific way. As noted in the specification, the number of "flats" can be from one (1) to four (4) and four (4) is shown in the preferred embodiment. Obviously, had one been shown, the Examiner would have had a difficult time in arguing that Black could add flats to the embodiment to accommodate a wrench. Aside from making general hypothesis about how Black can be modified, the fact remains that the flats are not for accommodating a wrench and are there merely to allow for the flow of air, and does so in a very distinct manner so as to atomize the air. It is believed that the Examiner's argument is without merit and for that matter, is not pertinent to the fact that Black does not disclose flats. The Examiner, by admission, notes that Black fails to show flats and the hypothesis of modifying Black to provide flats has no basis in fact or in reason. It will be noted that element 48 of Black is an adjustable member with threads on the outer diameter and serves to regulate flow through a plurality of holes (B) (see Fig. 5). Since, the Black gun is entirely different than the gun shown in the present invention, it is, indeed, difficult to make comparisons to the claimed invention.

Moreover, it is believed that the member 52 of Black is not a "fluid tip" and is configured differently from a fluid tip, as that term is understood by those skilled in this art. In Black, it will be

appreciated that the area of the discharge opening of 52 equals the cross sectional area of the passage 12 to which it is attached. The stream emanating from the tip 26 of applicants' structure and the stream emanating from the flats has a different result than what occurs from the discharge of element 52 of the Black reference.


The Examiner has through some extent argued that the claims do not recite that the gun is hand-held but merely recite that it is "miniaturized". Reading the specification of this application can only come to one conclusion, namely, miniaturize means that it is capable of being hand-held, and hand is singular. For example, see page 5 where it states ..."As a matter of fact, we have found that it was necessary to add additional components in order to reduce the overall size and weight of the gun so that it could be hand-held, that is, held by one hand..." Applicants could not be more emphatic as to this aspect of the invention. Had the Examiner suggested that the claims would overcome the prior art by including the recitation of the "hand-held", applicants would not be adverse to such an amendment.

It is believed that Applicants have already presented its arguments to advance the allowability of all the claims and will rely on the Brief to overcome the Examiner's conclusions.

It is respectfully requested that the Examiner be reversed and these claims be allowed.

Respectfully submitted,

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